

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Eric Lance Sabot,	)	
	)	
Petitioner,	)	<b>ORDER ADOPTING</b>
	)	<b>REPORT AND RECOMMENDATION</b>
vs.	)	
	)	
Colby Braun, Warden,	)	
	)	Case No. 1:17-cv-068
Respondent.	)	

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The Petitioner, Eric Lance Sabot, filed a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody on April 6, 2017. See Docket No. 2. On June 6, 2017, the Respondent filed a motion to dismiss the petition for failure to exhaust state court remedies. See Docket No. 9. Sabot did not respond to the motion.

Magistrate Judge Charles S. Miller, Jr. reviewed the petition and the motion to dismiss and issued a Report and Recommendation on July 18, 2017. See Docket No. 14. Judge Miller recommended Sabot's petition be dismissed without prejudice. Specifically, Judge Miller found Sabot had failed to exhaust his state court remedies prior to filing his habeas petition with this Court.

The parties were given fourteen (14) days to file objections to the Report and Recommendation. No objections were filed.

The Court has carefully reviewed the entire record and the relevant law and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 14) in its entirety, and **ORDERS** as follows:

- 1) The Court **GRANTS** the Respondent's Motion to Dismiss (Docket No. 9) and **DENIES WITHOUT PREJUDICE** Sabot's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Docket No. 2).
- 2) The Court certifies that an appeal from the denial of this petition may

not be taken in forma pauperis because such a appeal would be frivolous and cannot be taken in good faith.

- 3) The Court finds dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). If the Petitioner desires further review of his motion he may request issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.

**IT IS SO ORDERED.**

Dated this 21st day of August, 2017.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge  
United States District Court